

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

ALEX BRAITBERG, on behalf of himself  
and all others similarly situated,  
  
Plaintiff,  
  
vs.  
  
CHARTER COMMUNICATIONS, INC.,  
  
Defendant.

Case No. 4:13-cv-00498-HEA

**CHARTER’S MOTION TO DISMISS PLAINTIFF’S**  
**“CLASS ACTION COMPLAINT”**

a concrete and particularized “injury-in-fact” as to himself, the Court lacks subject matter jurisdiction over the case. Here, Plaintiff has not alleged any such injury. His mere allegation of a statutory violation is not enough.

5. Next, concomitant with Article III, the statute, itself, affords a private right of action only to those customers who are “aggrieved” by a statutory violation and sustain “damages.” Plaintiff’s allegation about being “aggrieved” and “damaged” – *i.e.*, that he and class members have a pecuniary interest in the PII maintained by Charter – is one already rejected by courts when assessing threshold standing.

6. An additional reason why Plaintiff’s claim should be dismissed is because the plain face of the Complaint shows no statutory violation. According to paragraph 33, Plaintiff terminated his Charter service less than three years ago. However, the statute does not create a deadline after which a cable operator cannot keep a customer’s PII — without violating the statute, a cable operator may retain PII for at least six years after account termination for purposes of the federal tax limitations period. Thus, there is no conceivable statutory violation as to Plaintiff. In fact, he would have to wait for at least *three more years* before he could assert a claim against Charter concerning any retention of his PII.

7. Finally, Plaintiff’s allegation that Charter has a PII record retention policy that violates the statute – *i.e.*, that Charter “indefinitely” retains the PII of its former customers – is too vague and unsupported to satisfy the Rule 8(a) pleading standard. As just stated, Plaintiff’s own experience with Charter does not concern a statutory violation. He cites nothing else. The Complaint, therefore, should be dismissed for lack of any requisite specific facts to assure the Court that some plausible basis for liability exists.

8. In further support, Charter incorporates by this reference its accompanying

memorandum of law.

WHEREFORE, Charter respectfully requests that the Court dismiss Plaintiff's "Class Action Complaint" with prejudice, pursuant to Rule 12(b)(1) (for lack of subject matter jurisdiction) and Rule 12(b)(6) (for failure to state a claim for which relief may be granted), and grant all other appropriate relief in favor of Charter.

Respectfully submitted,

By: /s/ Robert J. Wagner

Roman P. Wuller, #36115MO  
Robert J. Wagner, #46391MO  
THOMPSON COBURN LLP  
One US Bank Plaza  
St. Louis, MO 63101  
314-552-6000  
314-552-7000 (fax)  
rwuller@thompsoncoburn.com  
rwagner@thompsoncoburn.com

Attorneys for Defendant Charter Communications,  
Inc.

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true copy of the foregoing was filed electronically with the Clerk of the Court to be served via operation of the Court's electronic filing system on this 13<sup>th</sup> day of May, 2013, upon the following:

Ryan A. Keane  
THE SIMON LAW FIRM, P.C.  
800 Market Street  
Suite 1700  
St. Louis, Missouri 63101

*Attorneys for Plaintiff, Alex Braitberg*

/s/ Robert J. Wagner